

726.7002

using other than full and open competition.

[58 FR 8702, Feb. 17, 1993. Redesignated and amended at 61 FR 39093, July 26, 1996; 62 FR 40468, July 29, 1997]

726.7002 Definitions.

(a) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(b) *Disadvantaged enterprises* means U.S. organizations or individuals that are:

(1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(3) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

(d) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(e) *Small disadvantaged business* means a small business concern (as defined in FAR 19.001) that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged (as defined in this section), or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals (as defined in this section) and that has its management and daily business controlled by one or more such individuals.

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(f) *Socially disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

[56 FR 27209, June 13, 1991, as amended at 56 FR 52212, Oct. 18, 1991. Redesignated at 61 FR 39093, July 26, 1996]

726.7003 Policy.

USAID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in foreign assistance appropriation acts, contracts which are to be funded from amounts made available from the appropriations cited in section 706.302-71(a)(1) are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with certain disadvantaged enterprises shall be authorized in accordance with 706.302-71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with section 726.7007;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of \$100,000.

[56 FR 27209, June 13, 1991. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997]

726.7004 Determination to use other than full and open competition.

The determinations required in order to use the authority under 706.302-71 for other than full and open competition shall be made by the contracting officer in consultation with the Director of OSDBU. In the event of a disagreement between the contracting officer and the Director of OSDBU, the head of the contracting activity shall make the final determination.

[55 FR 8470, Mar. 8, 1990. Redesignated at 61 FR 39093, July 26, 1996.]

726.7005 Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.7007 are based on statutory requirement and may not be deviated

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from under the provisions of subpart 701.4. By statute, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The M/OP Director has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.7007.

[58 FR 8702, Feb. 17, 1993. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997; 64 FR 42040, Aug. 3, 1999]

726.7006 Determination of status as a disadvantaged enterprise.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify, as of both the date of submission of its offer and the date of contract award, as a small disadvantaged business (as defined in 726.7002), an historically black college or university, a college or university in which more than 40 percent of the students are Hispanic Americans, or a private voluntary organization controlled by individuals who are socially and economically disadvantaged. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small disadvantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997]

726.7007 Requirement for subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.7002) with respect to which more than \$500,000 is to

be funded with amounts made available for development assistance or from the appropriations cited in section 706.302-71(a)(1) shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged enterprises, including disadvantaged enterprises which are not small.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.7005 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226-2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991; 56 FR 52213, Oct. 18, 1991; 58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997; 62 FR 47532, Sept. 9, 1997]

726.7008 Limitations on subcontracting.

The contracting officer shall insert the clause at 752.226-3, Limitations on Subcontracting, in any solicitation and contract for technical assistance services which is to be awarded under the authority of 706.302-71.

[58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 51235, Oct. 1, 1996]

Subpart 726.71—Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights

726.7101 Policy.

USAID Policy Determination (PD) 20, "Guidelines to Assure USAID Programs do not Result in the Loss of Jobs in the U.S." implemented statutory prohibitions on expenditure of appropriated funds. The PD contains a standard provision for inclusion in USAID-funded grants and inter-agency